

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JINGLI HUANG,

Plaintiff,

v.

SMALL BUSINESS ADMINISTRATION,
et al.,

Defendants.

Case No. 22-cv-03363-BLF

**ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS ON APPEAL**

[Re: ECF No. 52]

Before the Court is an application filed by Plaintiff Jingli Huang to proceed in forma pauperis on appeal. ECF No. 52. For the reasons stated below, the Court DENIES Plaintiff's application.

I. BACKGROUND

Plaintiff Jingli Huang, proceeding *pro se*, filed this case against Defendants on June 8, 2022. ECF No. 1. The Court granted Huang's motion to proceed in forma pauperis, screened his original complaint pursuant to 28 U.S.C. § 1915, and dismissed the complaint with leave to amend in part. ECF No. 11. After that order issued but before he filed an amended complaint, on July 1, 2022, Huang filed a motion for a temporary restraining order. ECF No. 12. The same day, the Court denied the motion for a TRO on several grounds. ECF No. 13. On July 20, 2022, Huang filed an amended complaint. ECF No. 14. And Huang filed a second motion for a temporary restraining order on July 28, 2022. ECF No. 15. The Court screened his amended complaint pursuant to 28 U.S.C. § 1915 and dismissed the complaint with leave to amend in part. ECF No. 17. The Court also denied Huang's second motion for a temporary restraining order. ECF No. 16. On August 29, 2022, Huang filed a second amended complaint. ECF No. 18. On August 30,

2022, he filed a third motion for a temporary restraining order. ECF No. 20. The Court denied the third motion for a temporary restraining order the following day. ECF No. 21. The Court screened the SAC and determined that while many of the problems identified in the previous screening orders remained, it would allow service of the SAC on the Defendants. *Id.*

On November 21, 2022, Defendants filed a motion to dismiss. ECF No. 31. On April 19, 2023, the Court granted Defendants' motion to dismiss without leave to amend. ECF No. 50.

On May 17, 2023, Plaintiff filed a notice of appeal from the Court's Order granting the motion to dismiss without leave to amend. ECF No. 53. He also filed the instant motion for leave to proceed in forma pauperis on appeal. ECF No. 52.

II. DISCUSSION

The Court may authorize a plaintiff to file an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a). "[A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." Fed. R. App. P. 24(a)(1). That motion must include an affidavit that (A) "shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs"; (B) "claims an entitlement to redress"; and (C) "states the issues that the party intends to present on appeal." *Id.*

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "An appeal is taken in 'good faith' where it seeks review of any issue that is 'non-frivolous.'" *Hawkins v. California Health & Human Servs.*, No. 2-18-cv-05518-JGB (JDE), 2019 WL 6448939, at *1 (C.D. Cal. Aug. 15, 2019) (quoting *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)). "An in forma pauperis complaint is frivolous if it has 'no arguable basis in fact or law.'" *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (quoting *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984)).

Plaintiff seeks to appeal the Court's order dismissing the second amended complaint without leave to amend. ECF No. 50. Plaintiff explains that he is going to appeal the Court's determination that he does not have subject matter jurisdiction. *See* ECF No. 53. He appears to be

1 making the same arguments on appeal that he made before this Court. None of the arguments that
2 Plaintiff made in this Court would be non-frivolous if made again on appeal, and thus the Court
3 finds that there are no valid reasons upon which this appeal can be based.

4 **III. CONCLUSION**

5 For the reasons stated above, the Court hereby CERTIFIES that Plaintiff's appeal is not
6 taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3), and it therefore DENIES
7 Plaintiff's motion to proceed in forma pauperis on appeal. This Order is without prejudice to
8 renewal of the request to the Ninth Circuit.

9 **IT IS SO ORDERED.**

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11 Dated: May 17, 2023

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14 BETH LABSON FREEMAN
15 United States District Judge
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